

REMARKSA. Background

Claims 39-41, 43-45, 47-67, and 89-108 were pending in the application at the time of the Office Action. The Office Action rejected claims 39, 41, 43-45, 47-51, 54-57, and 60-67 as being obvious over alleged prior art. Claims 40, 52, and 89-108 were allowed. Claims 53, 58, and 59 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. No amendments are made to the claims by this response. As such, claims 39-41, 43-45, 47-67, and 89-108 are again presented for the Examiner's consideration in light of the following remarks.

B. Rejection on the Merits

Paragraphs 4 and 5 of the Office Action rejected claims 39, 41, 43-45, 47-51, and 54 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,595,444 to Tong et al. in view of U.S. Patent No. 6,704,595 to Bardy.

Paragraph 6 of the Office Action rejected claims 55 and 56 under 35 USC § 103(a) as being unpatentable over the Tong patent in view of Bardy and further in view of U.S. Patent No. 4,865,044 to Wallace et al.

Paragraph 7 of the Office Action rejected claims 57, 61-63, and 65-67 as being unpatentable over the Tong patent in view of the Wallace and Bardy patent.

Paragraph 8 of the Office Action rejected claim 60 under 35 USC § 103(a) as being unpatentable over the Tong patent in view of the Wallace and Bardy patent and further in view of U.S. Patent No. 5,050,612 to Matsumura.

Each of the above rejections are based on newly cited U.S. Patent No. 6,704,595 to Bardy. The earliest possible prior art date for the Bardy patent is November 16, 1999 which is the filing date of the divisional application to which priority is claimed. The present application claims priority to New Zealand Application No. 332473 filed October 23, 1998. Because the priority date of the present application is earlier than the earliest possible prior art date for the Bardy patent, applicant respectfully submits that the Bardy patent cannot be prior art against the present application. This finding was discussed with and agreed to by the Examiner during a telephone interview conducted on September 23, 2004. Accordingly, because the Bardy patent is not prior art and because all of the rejections set forth in the Office Action are based on the Bardy patent, applicant respectfully requests that all of the rejections set forth in the Office Action be withdrawn.

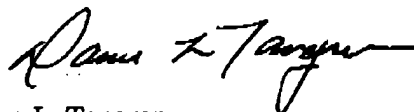
C. Conclusion

In view of the foregoing, applicant respectfully requests the Examiner's reconsideration and allowance of claims 39-41, 43-45, 47-67, and 89-108 as currently pending.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 28 day of September 2004.

Respectfully submitted,



Dana L. Tangren  
Attorney for Applicant  
Registration No. 37,246  
Customer No. 022913  
Telephone: (801) 533-9800  
Fax: (801) 328-1707

DLT:dfw

W:\14684\47\DFW0000011626Y001.DOC